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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,721	03/17/2004	Toshihisa Nagashii	0505-1279P	1878

2292 7590 12/08/2005

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EXAMINER

LUM VANNUCCI, LEE SIN YEE

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,721

Applicant(s)

NAGASHII ET AL

Examiner

Lee Lum

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,7,13,20,22 and 24 is/are rejected.
- 7) ☒ Claim(s) 2-6,8-12,14-19,21 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. An Amendment was filed 9/27/05 in which Claims 19-24 were also added.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 7, 13, 20, 22 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Sagara et al 6546722.

Sagara discloses an exhaust system for a motorcycle 1 comprising
Body frame 2,
Swingarm 13 with axle (unidentified, inherent) of rear wheel 15,
Engine 11 with cylinder head (unidentified, inherent),
Exhaust system 40 connected to the cylinder head, a rear end exhaust portion 42 being disposed at a position higher than the rear axle (fig 2),
Exhaust control valve 64 for adjusting the flow area (figs 6a and 6b) in exhaust pipe 42, disposed forwardly and upwardly of the axle, and rearward of the engine (fig 2).

3. Claims 2-6, 8-12, 14-19, 21 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Prior art does not disclose the vehicle described above further comprising, *inter alia*, the exhaust control valve as closed in a low/medium speed region of the engine.

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4. The prior art considered pertinent to the disclosure, but not relied upon, include(s):
Yamamoto et al 4941319, Asaka et al 4336864.

5. RESPONSE TO REMARKS

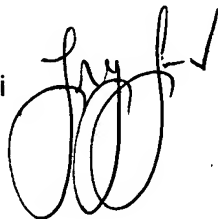
Upon reconsideration, Examiner has provided new rejections employing Sagara as obviating the elements in the independent claims, and some dependents. She apologizes for the inconvenience.

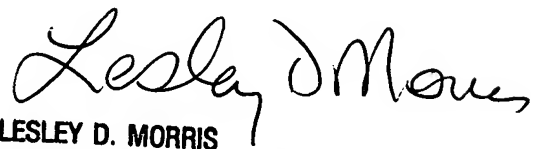
6. Communication with the Examiner/USPTO

Any inquiry concerning this communication, or others, should be directed to Ms. Lum at 571 272-6649, M-F, 9-5. If she cannot be reached, her supervisor, Ms. Lesley Morris, may be reached at 571 272-6651. Our central fax number is 571 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) System. For unpublished applications - private PAIR only. For published applications - private or public PAIR. For more information re PAIR - <http://pair-direct.uspto.gov>. Questions re private PAIR - contact the Electronic Business Center (EBC) at 866 217-9197.

Ms. Lee S. Lum-Vannucci
Examiner
11/23/05




LESLEY D. MORRIS
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